

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ALBERTO WILLIAM VILAR and  
GARY ALAN TANAKA,

Defendants.

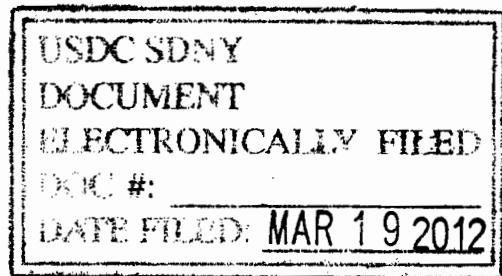
SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

-v-

AMERINDO INVESTMENT ADVISORS  
INC., *et al.*,

Defendants.



No. 05 Cr. 621 (RJS)

No. 05 Civ. 5231 (LTS)

ORDER

LAURA TAYLOR SWAIN, District Judge, and RICHARD J. SULLIVAN, District Judge:

On January 10, 2012, the Court held a joint conference in the above-captioned cases regarding the possible consensual distribution to investors of assets that are currently being held by the government pursuant to an Order of Forfeiture of Substitute Assets in the criminal matter – assets that will not otherwise be distributed until the resolution of Defendants' appeal. Following that conference, the Court formulated proposed structures for distribution and, by joint Order dated January 13, 2012, directed the parties and interested investors to submit responses. The Court received a total of nine submissions from the parties and investors containing responses to the Court's proposals, alternative proposals, and responses to the proposals

submitted by other parties. By joint Order dated February 7, 2012, the Court directed the government and SEC to make additional submissions detailing the entities and individuals known to have claims against the entities and accounts listed in the Substitute Assets Order, the value of the Substitute Assets, and the account balances for potential investor-claimants. The Court is now in receipt of the following additional submissions: (1) a letter from the SEC, dated February 21, 2012, responding to the Court's February 7, 2012 Order; (2) a letter from the government, dated February 21, 2012, responding to the Court's February 7, 2012 Order; (3) a letter from the Mayer family, dated February 23, 2012, requesting a hardship distribution; (4) a letter from Defendant Alberto William Vilar, dated February 29, 2012, responding to the government's and the SEC's submissions and opposing the Mayers' request for a hardship distribution; (5) a letter from Paul Marcus and Dr. Ronald Salvitti, dated February 29, 2012, opposing the Mayers' request; (6) a letter from the Mayer family, dated March 2, 2012, responding to Vilar's submission; and (7) a letter from Alfred Heitkonig, dated March 14, 2012, responding to the previously described submissions.<sup>1</sup>

Having reviewed the above-referenced submissions, as well as the parties' proposals received on January 27, 2012 following the Court's January 13, 2012 joint Order, the Court concludes that a consensual distribution of the Substitute Assets to investors is not achievable at this juncture, due to the parties' inability to agree on several necessary terms. Accordingly, the Court in the criminal matter, No. 05 Cr. 621 (RJS), will resolve the government's pending motion for entry of a final order of forfeiture (Doc No. 486) and Defendant's cross-motion for a stay of forfeiture pending appeal (Doc. No. 489) in a forthcoming Order.<sup>2</sup>

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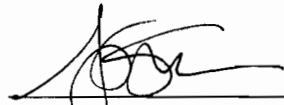
<sup>1</sup> In addition, on March 7, 2012, Mr. Vilar filed a motion for summary judgment in the civil matter, No. 05 Civ. 5231 (LTS), and on March 9, 2012, Mr. Tanaka filed a motion to dismiss in the same action. The Court is in receipt of a letter from Paul Marcus and Dr. Ronald Salvitti, dated March 8, 2012, expressing the view that Defendants' motions should not interfere with the distribution of investor assets.

<sup>2</sup> As noted above, the necessary parties have not consented to the release of funds at this time. Nevertheless, it appears that there is at least some agreement between the parties regarding certain hardship distributions. (See Doc.

Finally, in light of the substantial overlap between these two cases, the civil matter, No. 05 Civ. 5231 (LTS), will be transferred to Judge Sullivan's docket.

SO ORDERED.

Dated: March 19, 2012  
New York, New York



LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE



RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE

No. 186, at 5, No. 05 Civ. 5231; Letter from Gary Tanaka, dated Jan. 18, 2012, at 2.) Accordingly, if the government and the criminal defendants wish to reach an agreement to release funds to investors who have requested hardship distributions, they are welcome to do so at any time. However, absent an agreement between the parties, the Court cannot, at this time, *compel* the distribution of funds to investors and victims in the above-captioned matters.